

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.—Ordered to be printed.

Mr. BROWN submitted the following

REPORT.

The Committee on the District of Columbia, to whom was referred the memorial of the National Institution for the promotion of science at Washington city, refer to the subjoined correspondence between the Secretary of the Interior and the Attorney General, and conclude therefrom that the government has taken possession of the collections mentioned by the memorialists as in their keeping. It is very clear that these memorialists are under no sort of liability to this government on account of these collections, since the government has taken formal possession of its own property, and it is just as clear that government ought not to interfere as between memorialists and private parties to whom they may be liable. No further legislation seems to be necessary, and your committee ask to be discharged from the further consideration of the subject.

DEPARTMENT OF THE INTERIOR,  
*January 30, 1858.*

SIR: In compliance with your verbal request of this morning, I have the honor to enclose, herewith, a copy of a letter addressed by me, on the 19th of May last, to the Attorney General, together with a copy of his reply thereto, dated June 10, in reference to the collections of the several exploring expeditions in the Patent Office building.

Very respectfully, your obedient servant,

J. THOMPSON,  
*Secretary.*

Hon. A. G. BROWN,  
*United States Senate.*

DEPARTMENT OF THE INTERIOR,  
*May 19, 1857.*

SIR: I have the honor to ask your opinion as to the true construction to be placed upon an act, passed at the last session of Congress,

for a transfer of the collections of the exploring expedition, "and the permanent arrangement of the cases" therefor, as found on page 219 pamphlet laws. By act of 26th August, 1842, (Stat. at Large, vol. 5, p. 534,) it was directed "that until other provision be made by law for the safe keeping and arrangement of such objects of natural history as may be in the possession of the government, the same shall be deposited and arranged in the upper room of the Patent Office, under the care of such persons as may be appointed by the Joint Committee on the Library."

This would seem to have been intended as a temporary arrangement, and nothing more.

The sixth section of the act of 10th August, 1846, "to establish the Smithsonian Institution," provided "that in proportion as suitable arrangements can be made for their reception, all objects of art, and of foreign and curious research, and all objects of natural history, plants, and geological, and mineralogical specimens belonging, or hereafter to belong, to the United States, which may be in the city of Washington, in whosever custody the same may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them; and shall be arranged in such order, and so classed as best to facilitate the examination and study of them, in the building \* \* \* to be erected for the Institution."

And this would appear to have looked to a permanent arrangement.

The act of 3d March last (first herein referred to) is found in an appropriation bill, and in the following terms:

"For the construction and erection of suitable cases to receive the collections of the United States Exploring Expedition, and others in geology and mineralogy, belonging to the United States, now in the Patent Office, and elsewhere in Washington, fifteen thousand dollars."

"For the expense of the transfer of these collections, and the permanent arrangement of these cases, two thousand dollars."

Were there no intermediate act I should have no difficulty in understanding the one last named, but should, without hesitation, conclude that Congress intended the "transfer" of the collections to be made to the buildings of the Smithsonian Institution, and the permanent arrangement of the same therein, as was contemplated by the act of 1846.

Such, however, is not the case, for the eighth section of the act of August, 1854, (Stat. at Large, vol. 10, p. 572,) directs "that the collections of the exploring expedition, now in the Patent Office, be placed under the care and management of the Commissioner of Patents, who is hereby authorized to employ one principal keeper of said collections, at an annual salary of nine hundred dollars," &c.

And the question now arises whether this act is to be regarded as repealing that of 1846, or merely as transferring the collections from the custody of the "Joint Committee of the Library," in which they were placed by the act of 1842, to that of the Commissioner of Patents, until accommodations should be provided for them in the Smithsonian Institution.

Under these circumstances I have respectfully to ask your views upon the subject, and particularly under the following heads:

1. Is the act of 1854 to be regarded as superseding that of 1846, and are the "transfer" and "permanent arrangement," spoken of in the act of 3d March last, to be understood as bringing into the Patent Office building such collections of the kind alluded to in the act as were, at the time of its passage, deposited in the Smithsonian building or elsewhere? &c.

2. Is the act of 1846 still in force; and are the "transfer" and "permanent arrangement" spoken of to be considered as transferring the collections from the Patent Office building to that of the Smithsonian Institution, as contemplated by the sixth section of that act? And if so, will, or will not, the custody of those collections be also transferred to the regents of that institution; and the Commissioner of Patents, thereafter, relieved of all the responsibility in the premises?

In conclusion, I will take the liberty to add, that the Commissioner of Patents, in his report dated 2d January, 1854, and my predecessor, in his annual report for 1855, advised the removal of the collections from the Patent Office building; and Professor Henry and Judge Mason both informed me that the appropriations of the 3d March last, hereinbefore referred to, were made upon their joint application to Congress, having that object in view.

To facilitate your examination of the case, I enclose a letter, dated the 2d ultimo, from Professor Henry, and extract from the Patent Office report, and a printed copy of the report of my predecessor for 1855, alluded to above.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

ATTORNEY GENERAL OF THE UNITED STATES.

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ATTORNEY GENERAL'S OFFICE,

June 10, 1857.

SIR: The act of 26th August, 1842, (5 Stat. at Large, 534,) commands the objects of natural history belonging to the government to be kept and arranged in the Patent Office "until other provisions be made by law for their safe keeping and arrangement."

Other provision *was* made by law on the 10th of August, 1846. By an act of Congress approved on that day, (9 Stat. at Large, 105,) it was directed they should go to the building of the "Smithsonian Institution" as soon as suitable arrangements could be made to receive them.

Next, in chronological order, we have the act of 4th August, 1854, (10 Stat. at Large, 572,) which puts the collections of the exploring expedition, at that time in the Patent Office, under the care and management of the Commissioner, and authorizes him to appoint a principal keeper of them, at an annual salary of nine hundred dollars.

Lastly comes an appropriation on the 3d of March last, of fifteen thousand dollars, for suitable cases to receive these collections, and two thousand dollars for the transfer and permanent arrangement of

them, without saying where the cases shall be put up, or in whose custody the collections shall remain.

One thing is extremely clear. The appropriation is to be expended in erecting cases at the building of the Smithsonian Institution, if that be the place where the law requires the collections to be kept. There is no pretence for saying they are to be kept elsewhere, if the act of 1846 be still in force. That act is in force unless it was repealed by the act of 1854. The latter act does not expressly repeal the former. Is it a constructive or implied repeal?

In answering this question, it must be carefully recollected that implied repeals are never to be favored. It is so easy for the legislature, in making one law, to say that another law on the same subject is repealed, and when it is meant it is so likely to be said that we never presume it when it is not said, unless the two laws are in such palpable conflict that both cannot be executed. Where different statutes give to different persons privileges or powers which cannot subsist together, the latter grant must, of necessity, be construed as a withdrawal of the earlier one. But, in order to justify such a construction, it must appear to be a case of flat repugnancy or irreconcilable inconsistency. For a further exposition of this rule, and of the authorities which support it, I refer you to the case of *Brown vs. the Commissioners of Philadelphia county*, decided by the supreme court of Pennsylvania, and reported in 9 Harris, 37.

To me it seems easy enough to reconcile these two laws and make them stand together very well. The one was a permanent arrangement which was not to take effect for some years, the other was a temporary disposal of the same subject in the meantime. Regarding them in this light, they can both be executed.

I believe, therefore, that "all objects of art, and of foreign and curious research, and all objects of natural history, plants, and geological and mineral specimens" which belong to the United States, and which are anywhere in the city of Washington, including those collected by the exploring expedition, should go to the building of the Smithsonian Institution as soon as suitable arrangements can be made for their reception; and that the appropriation for cases to receive them, as well as that for the transfer and permanent arrangement of them, should be expended in such manner as will best carry out the true meaning and intent of Congress in passing the act of 1846.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Hon. J. THOMPSON,  
*Secretary of the Interior.*